

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6637 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MARY JO FREED
(Claimant-Appellant)

S.S.A. No.

WALKER SCOTT COMPANY
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-194

FORMERLY
BENEFIT DECISION
No. 6637

Employer Account No.

The claimant appealed from Referee's Decision No. LA-19627 which disqualified her for benefits on the ground that she had voluntarily left her most recent work without good cause within the meaning of section 1256 of the Unemployment Insurance Code, and relieved the employer's reserve account of charges under section 1032 of the code. The employer has submitted written argument.

STATEMENT OF FACTS

The claimant was last employed as a cosmetics saleswoman for a San Diego department store from October 5, 1959 through September 12, 1960. Her employment was terminated under circumstances hereinafter set forth.

At the time the claimant was employed she signed the following statement:

"Do you agree to a polygraph examination
by . . . Lie Detector Company on . . . Avenue
to determine if you have answered the questions

in the application truthfully or later in the event of a loss resulting from theft, inventory shortage, dishonesty or other irregularity?"

At the time it was the employer's policy to have employees submit to a polygraph test on a voluntary basis where some loss was being experienced. In February or early March the employer was experiencing substantial cash losses from the cash registers in the claimant's department. The claimant, among others, was asked to submit to a polygraph test, but refused. No action was taken by the employer against the claimant as a result of such refusal.

Because of unsatisfactory results from the voluntary program, the employer on March 12, 1960, notified all employees that polygraph tests would be compulsory as a condition of continued employment. The employer mentioned that the primary purpose of such policy was to remove suspicion from innocent employees. On September 12, 1960, the claimant was instructed to report to the lie detector company for a test on September 14, 1960. She was offered the fee necessary to pay for the test. The next day was the claimant's day off. She reported to work as usual on September 14, 1960 and notified the employer that she refused to submit to the polygraph test. The employer then informed the claimant that there was no work for her, in view of her refusal.

The claimant refused to submit to the test because she had not been accused of anything and she was convinced that she did not have to prove her innocence. She had heard other employees, who had previously submitted to the test, complain about the manner in which the tests were given. The claimant stated that she is "deathly afraid of electricity." Had the claimant submitted to the test she would have been required to sign a statement to the effect that the polygraph operator was relieved of any liability for anything which might result from the test.

There were approximately nine other saleswomen in the claimant's department. All were aware that there were shortages from the cash registers. They had requested that the employer arrange so that each have a separate drawer in the cash register. The registers were

equipped with additional drawers but the employer denied the request on the ground that it would cost too much and it was inconvenient.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant who has voluntarily left her most recent work without good cause or who has been discharged for misconduct connected with such work. Section 1032 of the code provides that the employer's account may be relieved of charges under such circumstances.

We have held that a termination of employment is a voluntary leaving of work where the claimant was the moving party and that it is a discharge where the employer was the moving party. In Benefit Decision No. 5421, we stated:

" . . . In cases where the employee is ready, willing and able to continue to render services to the employer, no matter how unsatisfactory the employer may consider these services to be, we do not believe it proper to apply the so-called doctrine of 'constructive quit', because in such cases it is the employer who is the moving party and it is the employer who has elected to insist, rightfully or wrongfully, that the employment contract be terminated. . . ."

In this case, the claimant was prepared to continue to render services. The employer terminated the employment relationship because the claimant failed to comply with an employer rule. The termination of employment was, therefore, a discharge.

We must now determine whether the claimant's discharge was for misconduct connected with her work. Misconduct has been defined to mean conduct evincing a wilful or wanton disregard of the standards of behavior which the employer has the right to expect of the employee, as well as action showing an intentional and substantial disregard of the employer's interests, or of

the employee's duties and obligations to the employer (Benefit Decision No. 4648). In order to constitute misconduct, the claimant must have materially breached a duty owed to the employer under the contract of employment which tends to injure the employer's interest (Benefit Decision No. 4893). Disobeying a reasonable order or rule of the employer is misconduct (Benefit Decisions Nos. 6598, 6421 and 6378); however, a discharge resulting from a violation of a company rule is not in itself misconduct which results in a disqualification from benefits (Benefit Decision No. 4685).

In this case, the claimant refused to comply with the employer's instructions to submit to a polygraph test. It is obvious that such test was repugnant to her; she felt that she was under no obligation to prove that she was innocent. The employer's method of attempting to discover the individual or individuals guilty of alleged theft, in effect, place upon the employees the burden of establishing that they were innocent of wrongdoing of which they had not even been accused (Benefit Decision No. 6624). Furthermore, the claimant was reluctant to take the test because of her fear of electricity and because of the information she had received concerning the conduct of prior tests of other employees. Before submitting to the test, the claimant would have been required to absolve the operator of the test from liability for any undesirable results therefrom. Under the circumstances of this case, it is our conclusion that the employer's rule was not a reasonable one and that the claimant had no duty to submit to such rule.

In Benefit Decision No. 6624, we held that the various claimants therein had either left their work with good cause or had been discharged for reasons other than misconduct when they failed to submit to polygraph tests. However, we specifically limited such decision to the factual situations therein. We see no reason to attach a similar limitation to this case.

Section 1963 of the Code of Civil Procedure (see section 520 - Evidence Code) provides that there is a presumption that a person is innocent of crime or wrong. This is evidence which must be overcome by anyone alleging otherwise. To place upon a person the initial burden of proving his own innocence is not only

unreasonable, but repugnant to our concepts. Therefore, our position is that a claimant who leaves his work rather than undergo a polygraph test as a condition of continued employment, or a claimant who is discharged for refusal to submit to such a test (even though he may have agreed to such test as a condition of employment) is not subject to disqualification under section 1256 of the code. Such a condition should have no bearing upon the claimant's eligibility for benefits under the Unemployment Insurance Code.

DECISION

The decision of the referee is reversed. Benefits are payable if the claimant is otherwise eligible. The employer's account is not relieved of charges under section 1032 of the code.

Sacramento, California, April 21, 1961.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

GERALD F. MAHER

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6637 is hereby designated as Precedent Decision No. P-B-194.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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